DOCUMENT RESUME

ED 455 604 EA 031 181

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TITLE	A Study of Issues and Costs to Districts Related to Special Education Complaints, Mediation, and Due Process Hearings in the State of Texas.
INSTITUTION	Texas A and M Univ., Corpus Christi. South Texas Research and Development Center.
PUB DATE	2000-06-00
NOTE	65p.
PUB TYPE	Reports - Research (143)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Court Litigation; Due Process; Elementary Secondary Education; Preschool Education; *Special Education
IDENTIFIERS	*Texas

ABSTRACT

The purpose of this study was to analyze the increase in special-education complaints that may result in litigation and their cost to districts. The study included the analysis of data from a survey disseminated to all superintendents in Regions 1 and 2 in Texas, and an analysis of data from special-education hearing dockets for hearings held from January 1998 through October 1999. Responses were used to determine perceptions of district personnel with regards to special-education complaints. Descriptive data from the 1998 and 1999 Texas Educational Agency due-process hearing dockets were also used. Study conclusions include: (1) The term "free appropriate public education" is difficult to define but required by law for all students with an identified handicap; (2) a large number of complaints focus on parental disagreements with student placement and the requirement of least-restrictive environment, as well as on components of the individual education plan; (3) resolution at the district level is more cost effective than going to hearing; (4) a cooperative environment between the district and the parent increases the likelihood that a dispute will be resolved without the filing of an official complaint; and (5) the best defense for any district is to comply with federal and state procedural requirements at all times. (RT)

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Executive Summary

A Study of Issues and Costs to Districts Related to Special Education Complaints, Mediation, and Due Process Hearings in the State of Texas

David Yeager, Robert Vela, Sam Giese, Lana Collavo

The purpose of the study was to analyze the increase in special education complaints that may result in litigation through the due process hearing process and their cost to districts. The study included the analysis of data from a survey disseminated to all superintendents in Regions 1 and 2 in Texas. In addition the study included an analysis of data from available special education hearing dockets for due process hearings held in Texas from January, 1998 through October, 1999.

Meeting the educational needs of all children, including those children who qualify for special education services is a priority for public school educators. By determining the primary issues addressed in special education complaints, school districts can proactively address the issues in forthcoming admission, review, and dismissal (ARD) meetings to determine educational programming for special education students. Armed with the knowledge of primary parental concerns, districts have the expertise to address those concerns in order to prevent escalation of complaints to formal due process hearings at the state level. This will enable districts to avoid costs associated with resolving complaints at the district level and with special education hearings at the state level.

The research for this study was a nonexperimental design. Data was collected in two ways. First, a survey was developed and disseminated to the purposive sample by mail. The research design for the survey was cross-sectional. The survey responses were used to determine specific perceptions of district personnel with regards to special education complaints. Second, data from the 1998 and 1999 TEA due process hearing dockets were categorized and recorded on

a chart entitled, "Texas Special Education Hearings Documentation Sheet." The data collected from the dockets was descriptive.

Based on the findings of the study, the following conclusions can be drawn regarding special education litigation and complaints and their costs to districts:

- The literature indicates that the term "free appropriate public education" is difficult to define but required by law for all students with an identified handicap.
- A large number of complaints focus on parental disagreements with student placement and the requirement of least restrictive environment, as well as on components of the individual education plan.
- Resolution at the district level is more cost effective than going to hearing.
- A cooperative environment between the district and the parent increases the likelihood that a dispute will be resolved without the filing of an official complaint.
- The best defense for any district is to comply with federal and state procedural requirements at all times.
- When compared to nearly one-half million special education students in Texas, the number of special education complaints that are resolved through due process hearing is very low.

The findings of this study suggest that the causes going to hearings were varied, as was the size of districts and the budgets of the districts. For districts in Regions 1 and 2, reported costs of litigation and resolution of complaints decreased from 1999 to 2000 and there was a shift from hearings to resolution at the district level. Overall, the results of this study show that various elements comprise the causes of litigation and the associated costs of that litigation.

Table of Contents

Chapter I – Introduction to the Study	6
Problem Statement	7
Purpose of the Study	7
Research Questions	8
Importance of the Study	8
Limitations of the Study	9
Definitions of Terms	9
Chapter II – Review of Literature	12
Introduction	12
Federal Laws and Regulations	12
The Litigation Movement	15
Issues Related to Special Education Complaints	16
Resolution of Special Education Complaints	18
Summary of Literature Review	19
Chapter III – Procedures	21
Introduction	21
Research Design	21
Sample	22
Instrumentation	22
Data Collection	22
Data Analysis	23
Chapter IV – Results	24

Analysis of Special Education Hearing Docket Data 24

Analysis of Research Questions 26

Research Question 1 26

Research Question 2 29

Research Question 3 30

Research Question 4 32

Chapter V – Summary, Conclusion and Recommendations 34

Purpose of Study 34

Review of Procedures 34

Summary of Findings 35

Conclusions 36

Recommendations 38

Recommendations for Public School Administrators 38

Recommendations for Public School Institutions 38

Recommendations for Further Research 39

References 40

Appendix A 42

Appendix B 43

Appendix C 44

Appendix D 45

Appendix E 46

Appendix F 47

A Study of Issues and Costs to Districts Related to Special Education Complaints, Mediation and Process Hearings in the State of Texas

Chapter I - Introduction

Introduction to the Study

Complaints by parents of special education students concern educators today. When a parent (or student) formally files a complaint, it confirms a parent's dissatisfaction with his / her child's educational programming and signifies disharmony between the home and school. Of importance to educators is the increase in special education complaints and the financial burden placed on school districts when resolving complaints. This is a concern that has continued to escalate since the beginning of the last decade. Zirkel (1990) warned educators:

> Brace yourself for a new tide of special education litigation, which could extend the definition of handicap to include conditions such as broken limbs and which could, in the process, squeeze your school budget. Although most other education litigation has subsided from its high water mark of the 1970's, the river of special education litigation is still at flood stage. The number of court decisions concerning handicapped students increased by more than 600 percent from the 1970s to the 1980s. During the same years, other types of school cases dropped by approximately 11 percent (p.1).

Meeting the needs of special education students has long been an issue that requires input from both parents and educators. The Federal Individuals with Disabilities in Education Act (IDEA), which was enacted in 1975, establishes educational requirements unique to special education students. It mandates parents and specified school personnel meet at least once per year to collaboratively formulate each special education student's curriculum. When making educational decisions regarding special education students, differences of opinion often escalate into legal battles as the natural order of things (Koppel, 1998).

Problem Statement

Superintendents in Region 2 of Texas have expressed a concern that litigation by special education students has increased in many school districts in recent years. Data from the Texas Education Agency (TEA) indicates that the number of special education students statewide has increased from 420,850 in fiscal year 1993-94 to 493,850 in fiscal year 1998-99. TEA data also confirms that the number of special education issues resolved through the Texas hearing process has increased since fiscal year 1993-94. In addition to the issues that were resolved through a State of Texas special education due process hearing, many issues arose in districts across the state that required action by the district but were resolved without a hearing.

To request a due process hearing, a parent, student, or representative of either simply submits a complaint to the Texas Education Agency by completing a two-page form (see Appendix A). The district is notified about the complaint by the Texas Education Agency. For fiscal year 1993-94, 173 due process hearings were requested and thirty of those requests resulted in a hearing. For fiscal year 1997-98, 460 due process hearings were requested and seventy-four of those requests resulted in a hearing. For fiscal year 1998-99, 388 due process hearings were requested and seventy-one requests resulted in a due process hearing. From January to October 1999, fifty-five due process hearing requests went to hearing. With the significant increase in the number of requests for due process hearings, superintendents are concerned about district costs for attorney's fees and other related costs necessary for special education hearings and the resolution of special education complaints without a hearing.

Purpose of the Study

The purpose of the study was to respond to concerns of Region 2 superintendents regarding the increase in special education litigation through the due process hearing process and

its cost to districts. The study included the analysis of data from a survey disseminated to all superintendents in Regions 1 and 2 in Texas. In addition the study included an analysis of data from available special education hearing dockets for due process hearings held in Texas during 1998 and 1999. Through the study the primary issues addressed through the hearing process were determined. Specifically, for Regions 1 and 2, the study analyzed how special education complaints are resolved and compared the cost of resolving special education complaints incurred by the districts.

Research Questions

- What are the most common issues addressed when parents file for a special education complaint that results in a due process hearing at the state level in Texas?
- What is the frequency of special education hearings in Texas by geographic region?
- At what frequency are complaints resolved at the district level, through mediation or through a due process hearing?
- How much does the resolution of special education complaints cost a district (direct and indirect)?

Importance of the Study

Meeting the educational needs of all children, including those children who qualify for special education services is a priority for public school educators. By determining the primary issues addressed in special education complaints, school districts can proactively address the issues in forthcoming admission, review, and dismissal (ARD) meetings to determine educational programming for special education students. Armed with the knowledge of primary parental concerns, districts have the expertise to address those concerns in an effort avoid escalation of complaints to a formal due process hearing at the state level; and thus, avoid district

costs associated resolving complaints at the district level and at special education hearings at the state level.

Limitations of the Study

The researchers identify three limitations to the study. First, there are twenty regions Texas with over 1000 school districts. For the study, only superintendents in Regions 1 and 2 were surveyed with a response rate of just under 70%. Second, only Texas Education Agency due process hearing dockets for 1998 and through October of 1999 were reviewed to determine primary issues specified in complaints that resulted in hearings. Next, although the return rate on the survey was just under 70%, many had incomplete information. Finally, a comparison of districts by comparable demographics and membership was not considered.

Definitions of Terms

ARD Committee – This is a Texas acronym for the individual education plan (IEP) team required under federal law to develop educational plans for special education students. The acronym specifically means Admission, Review and Dismissal Committee.

Complaint – For the purpose of this study, a complaint related to a special education issue is an official complaint that has been filed with the Texas Education Agency. Most complaints are resolved at the district level, through discussion or mediation.

Docket – The term docket for the purposes of this study, is the Texas Education Agency's official report of a due process hearing held at the state level to decide a special education complaint that has not been resolved at the district level or through mediation. Information in the docket includes identifying data regarding the district, the student, and the student's lawyer. The docket includes the issues of the case, a discussion of the case and the hearing officer's decision on each issue (See Appendix B).

Due Process Hearing – Due process hearings for special education complaints are conducted at the state level. A parent obtains an impartial due process hearing by submitting a request to the Texas Education Agency. The parent does not go through the school district.

IEP Team - An IEP team is required under federal law. IEP is the acronym of Individual Education Plan. In Texas this team is called the ARD committee. The committee or team must be composed of the specified members as defined in legislation. The purpose of the committee or team is to establish an individual education plan on a case by case basis. This plan is considered as a binding contract.

IDEA – This acronym represents the Individuals with Disabilities in Education Act. Congress first enacted this as a law in 1975 to protect the rights of students with disabilities. It was most recently reauthorized in 1997.

Mediation – This process is part of the due process proceedings established by the Texas Education Agency. Both parties may agree to attempt to settle complaint issues through mediation. The mediator is appointed by the Texas Education Agency.

Regular Education – Regular education is the term for all programs in the public school setting that are not specifically determined to be special education services.

Special Education – Special education refers to specialized programming for students who have one of thirteen identified handicapping conditions as defined by federal guidelines. Students must meet eligibility criteria and are eligible for services as determined by the ARD committee / IEP team.

Special Education Student – To be eligible for special education, a student must be referred, evaluated, and placed following guidelines developed by the State of Texas in compliance with federal law.

TEA – Texas Education Agency

Chapter II - Review of Literature

Introduction

This review of literature is divided into three sub sections. First, it focuses on the federal laws and regulations that regulate special education practices across the nation. The second subsection addresses the litigation movement related to special education issues. Finally, issues related to special education complaints are reviewed.

Federal Laws and Regulations

Federal laws and regulations have addressed the rights of individuals since the founding of the United States of America. The establishment of public education emphasizes the importance of education of the masses, as an American value. Historically, the American judicial system has recognized the importance of education for all children across all boundaries. However, it has been argued that children with disabilities were not afforded the free appropriate public education required for all children of all races as determined by the Brown v. Board of Education (1954) case. As cited by Hannon (1997),"the language of the Brown case stresses that it is doubtful that any child may reasonably by expected to succeed in life if he or she is denied the opportunity of an education (p.1)." Advocates for children with disabilities used the strong language of the Brown case to argue that the Equal Protection Clause of the Fourteenth Amendment protects children with disabilities along with children of different races (Hannon, 1997).

The language of Brown v. Board of Education (1954), as well as the Mills v. Board of Education of District of Columbia (1972) and Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania Decisions, motivated Congress to enact legislation to protect children with disabilities specifically. The Mills v. Board of Education case addressed

equal protection rights and constitutional due process of handicapped students in the District of Columbia and it held that the cost of educating children with disabilities should not undermine its overriding importance. The PARC decision applied the language of education for all from the Brown decision to include children with mental infirmities and gave parents an active role in planning the educational programs for children with disabilities. According to Guthrie and Reed (1991), the federal government recognized that handicapped students have experienced educational inequities. Thus, federal legislation was enacted that prohibits discrimination against handicapped students. Congress enacted legislation guaranteeing and reinforcing the rights of the handicapped (Hannon, 1997).

Zirkel (1997) states that the most prominent legislation to addressed the needs of handicapped children was Public Law (P. L.) 94-142 enacted in 1975, or the Education for All Handicapped Children Act. This act was renamed the Individuals with Disabilities Education Act (IDEA) in 1990. Guthrie and Reed (1991) note that this act includes the following provisions for handicapped students:

- Free appropriate public education
- Protection for their rights and those of their parents or guardian
- Assistance to states and localities in providing for their education
- Assessment and assurance that the educational efforts used are effective.

Guthrie and Reed (1991) point out that P. L. 94-142 also mandates that an individualized educational program (IEP) be prepared for each handicapped student. The law also specifies that handicapped children be educated with nonhandicapped children "to the maximum extent possible," thus adhering to the principle of least restrictive education environment. Additionally, tests, materials, or methods used to evaluate special needs of the student must be

nondiscriminatory. Hannon (1997) states that the IDEA was passed by the ninety-third Congress for the intent and purpose of providing children with disabilities with equality and self-sufficiency.

The IDEA was re-authorized in 1997. Scheffey (1998) noted that IDEA's amendments of July 4, 1997 strengthened the rights of special ed. children. Zirkel and Newcomer (1999) explain that included in the reauthorization of the IDEA is a multi-step process to resolve disputes. The 1997 amendments to the IDEA require that states offer mediation as a dispute resolution option for parents and school districts. When mediation fails or is bypassed, the IDEA's dispute resolution machinery continues with impartial due process hearing officers who conduct formal hearings. At the hearing level, parents and school districts become adversaries, and are typically represented by attorneys in these proceedings.

Zirkel and Newcomer (1999) state that under IDEA, the country's primary special education law, a partnership between school districts and the parents of students with disabilities is mandated. This partnership is generally productive with, millions of Individualized Education Plan (IEP) teams (in Texas, ARD committees) across the nation meeting annually to invest their time, resources and energy into developing and implementing free, appropriate educational programs for eligible special students.

Another key piece of legislation with regards to special education was the Handicapped Children's Protection Act (HCPA), which was enacted in 1986. Under this act, school districts must pay attorney's fees when the parents of a handicapped child prevail in disputed cases. Although the term "prevailing" suggests a lawsuit argued before a court, it was at this time historically that lawyers for parents began seeking attorney's fees for work done at the administrative level (Rist, 1990).

The Litigation Movement

Litigation focused on special education issues has increased during the last decade. Education litigation in general declined in the 1980s and the 1990s, yet special education litigation increased dramatically (Zirkel, 1997). Zirkel and Newcomer (1999) note that the 613 published court decisions related to special education issues during the 1990s represent almost a tenfold increase from the total in the 1970s. Similarly, in a study limited specifically to special education litigation, Maloney (1975) found that more than 60% of the pertinent 1,200 court decisions since 1978 had been decided since 1989. Zirkel (1997) states that in the two decades since the passage of the original special education legislation in 1975, the number of special education lawsuits has increased six-fold. According to Zirkel (1997) the increase in special education litigation is due to the successive waves of federal legislation and regulations that have provided particular protections for students with disabilities. Although districts tend to win court cases involving regular education issues. Special education litigation is often won, at least in part, by the student. Zirkel and Newcomer (1999) state:

> Special education clearly bucks the general trend favoring school district defendants in education litigation. One explanation for this exception is that the highly prescriptive legislation and regulations governing special education put the burden of proof squarely in the school district's court. Other factors are the emphasis in this field on individuals' rights (as symbolized by the "I" in "IDEA") and the emphasis in society today on protecting this particular civil rights groups, as those discriminated against on the basis of race and gender were protected in the 1970s and 1980s (p. 38).

Zirkel and Newcomer (1999) confirm that special education disputes continue to be a daily concern for public school administrators, a source of anxiety for parents and a growth

industry for attorneys. The filing of a civil suit acknowledges a failure to resolve disputes in local and state administrative forums. According to Zirkel (1997):

> The climate change from societal and judicial liberalism to conservatism has signaled a general trend of outcomes in favor of school district defendants [for non-special education issues], and the published precedents have made the field less fertile for successive settlements and unreported decisions. ...Special education clearly bucks the general trend favoring school district defendants in education litigation. One explanation for this exception is that the highly prescriptive legislation and regulations governing special education put the burden of proof squarely in the school district's court. Other factors are the emphasis in this field on individuals' rights (as symbolized by the "I" in "IDEA") and the emphasis in society today on protecting this particular civil rights group, as those discriminated against on the basis of race and gender were protected in the 1970s and 1980s (pp. 37 – 38).

Issues Related to Special Education Complaints

Certain issues tend to be specified repeatedly in special education complaints. Zirkel and Newcomer (1999) indicate that placement decisions have dominated special education litigation. More explicitly, Grzywacz (1999) states that issues of FAPE (free appropriate public education), including the obligation to serve, eligibility, methodologies and the provision of services to incarcerated and/or delinquent students were among the various issues the courts address in 1998.

Specifically, in The Special Educator (1998) special education attorney Diana McDonough of the San Rafael-based firm Lozano Smith offers the top five reasons special education costs districts a lot of money:

1. FAPE: School districts must provide/pay for a free appropriate public education, not just a free public education. Appropriate may include costly related services, residential placements, and one-to-one aides.
2. Ages 3-21: School districts must provide FAPE for students ages 3-21, not just those ages 5-18. Many programs for students younger than 5 or older than 18 are often costly because students in these categories are usually severely handicapped.
3. Consent and dispute resolution. Parent consent is required for student placement into special education programs.
4. IEP and assessment procedures. Such procedures are conducted at least annually and are time consuming. Failure to follow appropriate procedure will almost definitely result in a negative due process hearing decision.
5. Expanding eligible population. Parents sometimes want districts to identify their children as eligible for special education to insure individual attention. Parental pressure may result in over identification of special education students.

Although FAPE is considered a separate issue in the top five reasons listed above, each of the other reasons can be considered as an integral part of the providing of FAPE. The problem with providing FAPE to eligible handicapped student for school districts is that there has been no clear definition of the word "appropriate." Walsh (1995) in lieu of defining FAPE, describes how to provide FAPE:

> In order to provide FAPE, each district must 1) find all the eligible students; 2) conduct proper assessments to determined who is eligible and who is not; 3) create an individualized education plan for each eligible student; 4) provide the special education and related services called for in the individualized plan; 5) place the student in the school setting in which the

student will be the least isolated and / or stigmatized; and 6) make sure that the parents have the opportunity to both participate fully in the planning and placement process and challenge decisions made by the school (p. 1).

Clearly, FAPE is a phrase that is used as an issue for any special education litigation and most issues are cited as a denial of FAPE because any parental concern will focus on the inappropriateness of some action by a school district.

Resolution of Special Education Complaints

Most special education complaints are resolved at the district level. The district's first defense is careful attention to compliance with statutory requirements of IDEA. Districts who have acted in compliance are best able to defend their actions in a court of law and will not need to offer costly resolutions. However, Yell, Osborne, and DiMattia (1995) state that courts will closely examine district actions in special education cases. If the district is found to be out of compliance with IDEA, the court will rule against the district.

In the ideal situation, parents and school district employees will agree on what constitutes a free appropriate public education for a handicapped child (Rist, 1990). This is the case in most instances when it is noted that out of almost one-half million special education students in Texas, less that 100 hearings are held annually. The large majority of special education complaints are resolved at the district level or through mediation. However, the resolution of any complaint, regardless where it was resolved, generally results in some additional cost to the district.

Even though the numbers are small, often litigation arising from charges of the mishandling of students with disabilities may be avoided by a strong communication system between parents and the school district. Rist (1990) reported the results of a survey conducted by the National School Board Association (NSBA). Results of the poll indicated that 41% of school

attorneys believed that school districts wish to avoid litigation and are often likely to accept a parent' educational proposal for a child solely to avoid paying attorney's fees. In spite of compliance with IDEA, and in spite of efforts by the district to communicate effectively and to meet the needs of the special education student, sometimes a request for a special education cannot be avoided.

Summary of Literature Review

Litigation of special education issues has been a priority concern for school districts since the enactment of the Individuals with Disabilities in Education Act (IDEA), which was enacted by Congress in 1975. The purpose of this act was to address specifically the rights of the student with disabilities. The law mandated that the student with disabilities be afforded the same right to a free appropriate public education as nonhandicapped children. Litigation further increased with the enactment of the Handicapped Children's Protection Act (HCPA) of 1986, which placed in law the requirement that districts were responsible for attorney's fees when the parent of a child prevails in a disputed case. The reauthorization of IDEA in 1997, further specified rights of the handicapped student and responsibilities of school districts in providing a free appropriate education.

Issues addressed in special education complaints are generally focused on the lack of provisions for a free appropriate public education, which is difficult to define and thus difficult to prove compliance with statute on the part of the district. In addition, issues of eligibility and services (including related services) for students from ages three to twenty-one are often noted.

The district's best defense is documentation of compliance with statutory requirements of IDEA. In addition, effective communication between the parents and district employees is an effective strategy for meeting student needs and thus avoiding complaints and requests for due

process hearings. In spite of good intentions and careful attention to statutory requirements and procedures by district personnel, there are times when the district will find itself in a complaint situation.

Chapter III - Procedures

Introduction

The purpose of this section is to describe the procedures used to complete the study as described previously. The discussion of the procedures will address the research design, a description of the sample population, an explanation of the instrumentation and data analysis. In addition, the statistical methods used to analyze the data will be reviewed.

Research Design

The research for this study was a nonexperimental design. Data was collected in two ways. First, a survey and an introductory letter were developed and disseminated to the purposive sample by mail (see Appendixes D and E). The research design for the survey was cross-sectional. The survey responses were used to determine specific perceptions of district personnel with regards to special education complaints.

Conducting a cross-sectional survey was convenient and the results were determined quickly. Through the survey, some tentative conclusions were made and applied to districts across Texas. However, there may be important differences in districts across the state that can not be determined by a survey limited to superintendents in Regions 1 and 2. In addition, because the survey information was obtained at one time, results may be different if the survey was conducted over time.

Second, Data from 1998 and 1999 TEA due process hearing dockets were categorized and recorded on a chart entitled, "Texas Special Education Hearings Documentation Sheet" (see Appendix F). The data collected from the dockets was descriptive. It was analyzed to determine the frequency of litigation by region, the most common causes of litigation, characteristics of the plaintiff, and the frequency with which districts prevail in due process hearings

Sample

The results of the study were used to make generalizations regarding special education litigation across the state of Texas. Therefore, for the purpose of this study, all public school districts in Texas comprise the target population. The accessible population was all public school districts in Regions 1 and 2 of Texas. All superintendents in Regions 1 and 2 were contacted by mail to participate in the study. The superintendents for the Regions 1 and 2 were selected as the purposive sample because they have access to the information related to budget, student membership and complaint issues that was needed to complete the survey.

Instrumentation

To conduct the study, data was collected using two methods. A cross sectional survey containing questions addressing district costs for the resolution of complaints, methods of resolving complaints and perceived reasons for the filing of complaints was disseminated to superintendents in Regions 1 and 2. Descriptive data was collected from TEA dockets. The TEA docket data was recorded on a documentation sheet and analyzed.

Data Collection

To collect the survey data from superintendents, each superintendent was contacted by mail. The mail-out included an introductory letter and a two-page survey. Each survey was mailed with a self-addressed stamped envelope for easy return. In addition, a fax number was included for convenience. Two weeks after the mailing of the surveys, all superintendents who had not returned a survey were faxed a second copy of the survey. The return rate on the surveys was just under 70%.

To collect specific data from documentation of special education due process hearings, the researchers accessed the TEA website for copies of dockets that reported findings for special

education due process hearings held at the state level during 1998 and 1999. Each docket was downloaded and printed. The information was then analyzed, categorized, and logged on the documentation sheet. Data specifying student gender, age group, and handicapping condition was recorded. In addition the researchers documented the name of student's lawyer, the school district, and the region in which the district is located. Finally the issues were categorized and it was documented which party prevailed in regards to each issue.

Data Analysis

The purpose of the survey was to obtain data and perceptions regarded reasons for special education complaints directly from superintendents in Regions 1 and 2. Data from the survey returned from members of the purposive population was analyzed to determine complaint and hearing costs. Data from the survey also indicated the issues that area superintendents perceive to be the primary causes for special education complaints. Through this data, the researchers determined the range of costs of litigation in Regions 1 and 2 in 1998 and 1999.

In addition, the purpose of the study was to determine the frequency of issues that actually precipitated complaints from January, 1998 through October 1999. Information documented on the documentation sheet was used to determine if hearings are more prevalent by gender, age, student classification, or handicapping condition(s). Through analyzing docket data, trends were noted by reasons for complaints and by location of districts within certain Educational Service Center Regions

Chapter IV - Results

This chapter presents an analysis of the data collected for this study. It is organized into two major sections. The first section will analyze data from review of Texas Education Agency Dockets that detail the facts regarding special education hearings held at the state level. The second section will specifically address the four research questions.

Analysis of Special Education Hearing Docket Data

Each special education hearing held at the state level is documented in an official report referred to as a docket. Each docket includes identifying data for the district named in the hearing, characteristics of the student (for privacy reasons, the student's last name is not included in the information) and particular issues named in the case. The hearing officer is identified in the docket. The hearing officer makes a ruling on each issue either for the district or for the student / parent. These rulings are stated in the docket. Dockets are posted on the Texas Education Agency website and are available to the public.

Table 4.1 - General Texas Special Education Hearings Data

General Data	Highest Response	Cases/Numbers	Percent
Hearing Officer	Hollis	18	9.1
Gender	Male	102	81
Age	16	13	11.9
Classification	Elementary	43	34
Handicapping Condition	Learning Disabled	59	26.8
Reason	Other	107	32
Region	4	40	31.7

Table 4.1. illustrates trends in special education complaints across the state by noting the highest percent/number of incidences by category in Texas Education Agency dockets from January, 1998 through October, 1999. A review of 126 special education hearing dockets held from January, 1998 through October, 1999, found that of the 14 current Hearing Officers for the State of Texas, Hearing Officer Hollis heard the highest number of cases (18 of 126). In 81 of the 126 cases the student identified in the hearing documentation was male, and most hearings involved students between the ages of 14 and 17. The highest incidence of a single age was 16 with 13 of the 126 cases involving students who were 16 at the time the complaint was filed.

The handicapping conditions stated in the dockets were categorized into the thirteen handicapping conditions recognized by the State. The most common handicapping condition for students involved in hearings was "learning disabled" (26.8%), followed by "other health impaired" (21.8%) which addresses many medical conditions, and then "speech impaired" (20.9%). These three handicapping conditions were characteristic of students in 69.5% of the cases that went to due process hearing.

Each of the hearings involved a complaint filed for multiple reasons. The reasons for filing hearings as stated in the dockets were categorized into eight areas. "Inappropriate Education Plan" was identified as a reason for a complaint in 18% of the cases. "Inappropriate Least Restrictive Environment" was named in 12.4% of the cases and "Related Services" in 12.4% of the cases. A large number of complaints, 32%, fell into the "Other" category. Included in this was any reference to a denial of FAPE (free appropriate public education) that did not have specific issues defining the denial of FAPE. Students who had never been identified by the district as eligible for special education services were also included in this category.

The Hearing Dockets were reviewed to determine trends in district location for filed hearings. Of the 20 Educational Service Center regions in the State, the region with the most hearings was Region 4 (Houston area).

Analysis of Research Questions

The research questions investigated in this study are as follows:

1. What are the most common reasons parents file for a special education hearing at the state level
2. What is the frequency of special education hearings in Texas by geographic region?
3. At what frequency are complaints resolved at the district level, through mediation or through a due process hearing?
4. How much does the resolution of special education complaints cost a district (direct and indirect)?

The findings to these questions are presented and arranged by research question.

Research Question 1

What are the most common reasons that parents filed for a special education hearing at the state level? The research question was answered based on responses from a survey distribution and findings from Texas Education Agency Special Education Dockets.

Table 4.2 – Reasons for Special Education Complaints by Parents / Students as Perceived by District Administrators

	Never / Infrequently	Sometimes	Frequently / Always
	%	%	%
Parental misunderstandings	03	33	64
Parental rights	26	48	26
Parental safe guards	34	41	25
Inexperience teacher	50	30	20
Inexperience administrator	65	16	19
Inappropriate IEP	42	42	16
Noncompliance with ARD	43	23	33
Inappropriate LRE	40	43	17
Failure to provide appropriate resources	43	33	23
Related Services	47	25	28
Inappropriate assessment/identification	61	16	23
Lack of E.Y.S.	77	16	07
Federal Regulations	58	16	26
State Regulations	58	19	23

The survey that was distributed to districts in Regions 1 and 2 asked administrators to respond to the list of 14 reasons stated in table 4.2 that may contribute to the filing of special education complaints. Each administrator was to respond based on his/her perceptions. The results of an analysis of survey responses from district administrators indicate that district

administrators perceive that the most frequent cause for special education complaints is "parental misunderstanding" followed by "noncompliance with the decisions of the admission, review, and dismissal committee" by school district staff. The third highest reason for a special education complaint as perceived by district administrators is disputes over "related services," which include occupational therapy and physical therapy.

Table 4.3 - Documented Reasons for Complaints as Stated in TEA Dockets

Causes	Number	Percent
Inappropriate IEP	60	19
Not following ARD recommendations	18	6
Inappropriate least restrictive environment	41	12
Failure to provide adequate resources	16	5
Related services	41	12
Inappropriate assessment/identification	37	11
Lack of extended year services	10	3
Other	107	32

The researchers evaluated 126 dockets documenting special education due process hearings and found eight common reasons for filing special education complaints at the State level. Table 4.3 identifies the list of the eight actual reasons that parents / students filed special education complaints that resulted in due process hearings at the state level and the frequency with which each reason is stated in a complaint. Most of the dockets listed multiple reasons for the filing of each official complaint. The results of an analysis of docket records indicate that the most frequent clearly stated reason for special education complaints, as stated in the dockets, is

inappropriate IEP at 18% , followed by related services at 13%, and inappropriate assessment/identification at 11%. Thirty-two percent of the reasons fell into the category "Other." Included in this category were all references to a denial of FAPE (free appropriate public education) that was not clearly defined. Each of the reasons listed would be considered a denial of FAPE because each of the categories is a characteristic of an inappropriateness in a special education student's public education program. In addition, students who were never identified as needing special education services also fell into this category.

A comparison of the survey data from administrators in Regions 1 and 2 and TEA docket data indicates that "related services" was the only commonality between perceived reasons for special education complaints and actual identified reasons for filing special education complaints. Survey responses and docket records do not support similar reasons for filing special education complaints. The perceptions of administrators regarding the reasons for the filing of complaints are generally not consistent with the actual reasons as stated in TEA dockets.

Research Question 2

What is the frequency of special education hearings in Texas by geographic region? This research question was answered based on responses from information in Texas Education Agency Special Education Dockets.

Table 4.4 - Geographic Location of Filed TEA Hearings by Region

Region	Filed TEA Hearings	
	Number	Percent
1	5	4
2	15	12
3	1	1
4	40	32
5	1	1
6	3	2
7	0	0
8	1	1
9	3	2
10	16	13
11	8	6
12	3	2
13	8	6
14	3	2
15	1	1
16	1	1
17	0	0
18	1	1
19	6	5
20	10	8

The 126 available hearing dockets were evaluated to determine trends in location with reference to Educational Service Center Regions across the state of Texas. Table 4.4 shows that from January 1998 through October 1999, the highest number of hearings filed against school districts was in Region 4 with 32% of the total number of hearings from districts located in that region. School districts in Region 10 had 13% of the hearings filed, school districts in Region 2 had 12% of the hearings filed and school districts in Region 20 had 8% of the hearings filed. Sixty-four percent of the hearings filed at the state level were from districts located in four regions. All other regions (16 of 20) had a combined total of 36% of the hearings filed.

Research Question 3

At what frequency are complaints resolved at the district level, through mediation, or through due process hearing? The research question was answered based on responses from a survey distribution.

Table 4.5 - Complaint Resolutions for Regions 1 and 2

	1998-1999		1999-2000	
	Number	Percent	Number	Percent
Hearing	23	38	6	12
Mediation	2	3	4	8
At district level	36	59	40	80

Table 4.5 illustrates the number and percent of complaints resolved in Regions 1 and Region 2 from January 1998 through October 1999. Of the 61 complaints reported by school districts in Region 1 and Region 2 for school year 1998-99, 59% of the special education complaints were resolved at the district level. Three percent (3%) of the complaints were resolved through mediation and 38% of the complaints were resolved through due process hearings.

Of the 50 complaints reported by school districts in Region 1 and Region 2 for school year 1999-2000, 80% of the special education complaints were resolved at the district level. For 8% of the complaints resolution was through mediation and 12% of the complaints were resolved through due process hearings.

School districts in Regions 1 and 2 reported a combined total of 111 complaints for school years 1998-99 and 1999-2000. Of these complaints 68% were resolved at the district level, 26% were resolved through hearing procedures, and 5% were resolved through mediation.

Over the two years, there was a definite increase in resolution of complaints at the district level and through mediation. There was a decline in the number of complaints that were resolved through a due process hearing.

Research Question 4

Research question four asked how much does the resolution of special education complaints cost a district (direct and indirect)? The research question was answered based on responses from a survey distribution.

Table 4. 6 - Cost Estimates Related to Complaints

	Number Complaints	Average Cost	Total Budget
1998-99			
Hearings	11	$17,000	$187,000
Mediation	2	$7,500	$15,000
District level	16	$9,400	$150,000
1999-2000			
Hearings	2	$15,000	$30,000
Mediation	4	$2,500	$10,000
District level	15	$9,000	$136,000
Two-year Totals			
Hearings	13	$16,692	$217,000
Mediation	6	$4,167	$25,000
District level	31	$9,226	$286,000

The cost for special education complaints filed and resolved from January 1998 through October 1999 is shown at Table 4.6.

For 1998-99, districts in Regions 1 and 2 reported in the survey data that 23 special education complaints went to hearing, 2 complaints were resolved through mediation and 36 were resolved at the district level. For 1999-2000, these districts reported that 6 complaints went to hearing, 4 were resolved through mediation, and 40 were resolved at the district level. However, costs were not reported for the resolution of complaints by some districts. Table 4.6 addresses only those complaints with reported costs. Of the 29 complaints reported by school districts in Regions 1 and 2 that incurred costs in school year 1998-99,each of the 11 reported hearings cost the district an average of $17,000. The average cost of resolution at the district level was $9,375 for 16 complaints, and the average cost of resolution through mediation was $7,500 for 2 complaints.

Of the 21 complaints reported by school districts in Region 1 and Region 2, that incurred costs for school year 1999-2000, the average cost of resolution at the hearing level was $15,000 for 2 hearings. The average cost of resolution at the district level was $9,067 for 15 complaints, and the average cost of resolution through mediation was $2,500 for 4 complaints.

A total of 50 complaints was reported by school districts in Regions 1 and 2 that incurred costs from January 1998 through October 1999. To resolve 13 hearings districts spent a total of $217,000. To resolve 6 complaints through mediation, districts spent $25,000, and to resolve 31 complaints at the district level, districts spent a total of $286,000. For the two-year period, the average cost for a hearing was $16,000, for resolution through mediation was $4,167, and for resolution at the district level was $9,226. This amount is about the cost of one salary for one noncertified staff member.

Chapter V - Summary, Conclusions and Recommendations

This chapter summarizes the research project and the results of the study. This chapter also presents conclusions drawn from the results of the study and makes recommendations based upon the findings and conclusions of the study, for public school administrators, public school institutions and for further study.

Purpose of the Study

The purpose of the study was to examine and respond to concerns of superintendents in Region 2 regarding the increase in special education litigation and its costs to districts. The study included an analysis of data from special education hearings held in Texas during 1998 and 1999. With the increase in the number of hearings, there is a concern among superintendents regarding related costs including attorney's fees.

The following questions were posed for this study:

1. What are the most common reasons parents file for a special education hearing at the state level?
2. What is the frequency of special education hearings in Texas by geographic region?
3. Once a hearing has been filed, how do districts typically resolve the issue?
4. How much does the resolution of special education complaints cost a district (direct and indirect)?

Review of Procedures

The survey was administrated utilizing a questionnaire designed to collect data on the concerns of Regions 1 and 2 superintendents regarding the increase in special education litigation and its cost to districts. The components, which make up the survey are: 1) General

Questions; 2) Special Education Complaints and Hearings; 3) Cost Estimates Related to Complaints; and 4) Probable Causes of Complaints.

The accessible research population under review for this study was all public school districts in Region 1 and 2. Also, the superintendents for the regions 1 and 2 were selected as the purposive sample. The purposive sample was determined using the 1998 –1999 Texas School Directory, published annually by the Texas Education Agency. Survey questionnaires were mailed to 80 Texas public school superintendents identified by name and location in the 1998 – 1999 Texas School Directory. The useful response rate was 67.5%. The data collected from the survey was coded analyzed and data was manually manipulated to complete selected tables.

Summary of the Findings

This section presents a summary of the major outcomes of the study. First, an analysis of TEA hearings for school years 1999 and 2000 found that hearing officer Holtz heard the most cases at 18. The majority of students who went to hearings, (81%) were males. More hearings involved student between the ages of 14 and 17 (31%) than any other age group and the most common handicapping condition was learning disabled (31.7%) Districts in Region 4 from the Houston area held more hearings than any other region in Texas (40 of 126) from January 1998 to October 1999.

Also, the analysis revealed that of the 330 total documented reasons found in the 126 TEA dockets, 32% were considered "Other" causes meaning a variety of different causes not easily categorized but often related to a denial of a free appropriate public education. The second highest category was inappropriate individual education plans (IEPs) at 18%. Inappropriate least restrictive environment (LRE) and related services tied for third highest at 12.7% each.

An analysis of the survey instrument suggests that the responding districts vary in size of student population (31 to 39,844) with budgets ranging from $250,000 to $289,000,000.

The number of special education complaints that went to hearings (as reported by administrators in Regions 1 and 2) between school years 1999 and 2000 decreased by 73% (from 23 to 6). During this same period, the number of special education complaints mediated increased from 2 to 4 and complaints resolved at the district increased by 10% from 36 to 40 in 14 reporting districts.

From the perceptions of administrators in Regions 1 and 2, the most frequently perceived probable cause for complaints was "parental misunderstandings" followed by "noncompliance with the decisions of the admission, review and dismissal committee" by school district staff and disputes over "related services." Thus, the study provides an indication into what administrators believe has caused the increase in special education litigation and costs to districts.

The analysis of TEA docket data indicates that actual reasons that complaints are filed differ from perceptions of administrators in Regions 1 and 2. The common reason indicated both by administrators and in TEA docket information is disputes over related services. However, inappropriate individual education plans is stated with the most frequency in TEA dockets, followed by relate services and inappropriate assessment/identification.

Conclusions

The findings of this study suggest that the causes going to hearings were varied, however, from the literature review and the review of data from the study indicate that complaints generally are related to the charge that a student is not receiving a free appropriate public education. Specifically, complaints point to: the development of an inappropriate IEP; not following ARD recommendations; placement in an inappropriate least restrictive environment;

failure to provide adequate resources; not providing related services; inappropriate assessment/identification; and lack of extended year services.

District administrators in Regions 1 and 2 reported that costs of the resolution of special education complaints, including litigation, decreased from 1999 to 2000. An analysis of survey data from administrators indicates that there has been a shift from the resolution of complaints through hearings to resolution at the district level. The literature review and the survey information indicate that there is a trend on the part of districts to resolve issues at the district level and to settle with parents quickly to avoid attorney's fees and hearing costs.

Based on the responses from Regions 1 and 2, the following conclusions can be drawn regarding the concerns of superintendents regarding the increase in special education litigation and its cost to districts:

- The literature indicates that the term "free appropriate public education" is difficult to define but required by law for all students with an identified handicap.
- A large number of complaints focus on parental disagreements with student placement and the requirement of least restrictive environment, as well as on components of the individual education plan.
- Resolution at the district level is more cost effective than going to hearing.
- A cooperative environment between the district and the parent increases the likelihood that a dispute will be resolved without the filing of an official complaint.
- The best defense for any district is to comply with federal and state procedural requirements at all times.
- When compared to nearly one-half million special education students in Texas, the number of special education complaints that are resolved through due process hearing is very low.

Recommendations

Recommendations are presented in this section for public school administrators, public school institutions in Texas, and for further research. The recommendations presented are based upon the findings and conclusions of this study.

Recommendations for Public School Administrators

To ensure the proper educational program for each student with and identified handicap and to thus minimize the number of special education complaints against a school district, public school administrators must:

- be well- versed in the most common reasons for filing special education complaints;
- have a working knowledge of the special education laws;
- follow appropriate procedures to ensure compliance with statutory requirements in a timely manner; make every effort to resolve complaints at the district level,
- Consciously develop open lines of communication with parents of students with disabilities, and
- Include parents in activities when appropriate.

Recommendations for Public School Institutions

The findings of this study suggest that public school institutions must consider the relevance of the issues commonly associated with special education complaints. At the local level, school boards for public school districts must support training and staff development focused on special education laws, procedures, and programming for administrators and staff. At the University level, curricula for all students seeking teacher certification should include information regarding special education issues.

Recommendations for Further Research

It is recommended that further research in this area include more regions in the state. Comparing results from the State of Texas to other states would show nationwide trends related to special education complaints. Conducting the survey to districts at the end of a fiscal year would provide more complete information and conducting the survey over time would more accurately show trends. Including a comparison of districts by comparable demographics and membership would be beneficial.

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Appendix A

REQUEST FOR SPECIAL EDUCATION DUE PROCESS HEARING AND REQUIRED NOTICE

The Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Title 20, United States Code Section 615(b)(8) requires that the Texas Education Agency develop a model form to assist parents in requesting a special education due process hearing and in providing the notice required by Section 615(b)(7) of those amendments. You may use this form to satisfy this notice requirement, but any written request that complies with Section 615(b)(7) may be substituted for this form.

CHILD'S NAME	NAME OF PARENT, GUARDIAN, OR SURROGATE PARENT (if applicable)
STREET ADDRESS OF CHILD'S RESIDENCE	MAILING ADDRESS OF PARENT, GUARDIAN, OR SURROGATE PARENT (if applicable)
NAME OF SCHOOL CHILD IS ATTENDING	NAME OF SCHOOL REPRESENTATIVE OR CONTACT (if known)
NAME OF RESPONDENT AGENCY(S)	MAILING ADDRESS (if Respondent is a School District, mail to the Superintendent)

Nature of the Complaint (check all boxes that apply):

- ☐ The Respondent agency's *Identification* of the child as a child with a disability needing special education or related services under IDEA.
- ☐ The Respondent agency's *Evaluation* to determine whether the child has a disability under IDEA, and/or the nature and extent of the special education and related services the child needs.
- ☐ The Respondent agency's educational *Placement* of the child in special education or related services under IDEA.
- ☐ The Respondent agency's provision of a *Free Appropriate Public Education* to the child under IDEA.

The Facts Relating to the Complaint. Include relevant dates, specific events and/or persons involved.
If additional space is needed, you may attach extra sheets:

Nature of the Proposed Resolution (check all boxes that apply):

- ☐ An order directing the Respondent agency to take specific actions required by IDEA.
- ☐ An order directing the Respondent agency to reimburse the cost of private educational services.
- ☐ An order directing the Respondent agency to provide compensatory special education or related services.
- ☐ An order directing the Respondent agency to reimburse attorneys fees and/or costs.
- ☐ Other, please specify: _____

Description of the Proposed Resolution. To the extent known and available to the parents at the time, describe the complete remedy and resolution of the problem you want the hearing officer to order.

Contact Information for Authorized Representative:

NAME _____

MAILING ADDRESS _____

_____

PHONE NUMBER _____

FAX NUMBER _____

Capacity of Authorized Representative (check one):

- ☐ Attorney for Petitioner Bar Number: _____ State: _____
- ☐ Non-attorney Representative of Petitioner
- ☐ Next Friend of Petitioner (Parent, Guardian, or Surrogate Parent, etc.)
- ☐ Self (Child with a Disability 18 years or older)

I declare that the foregoing is true and correct to the best of my knowledge after reasonably diligent inquiry.

_____ _____

AUTHORIZED REPRESENTATIVE DATE

BEST COPY AVAILABLE

Appendix B

DOCKET NO. 421-SE-797

DONNIE M., B/N/F SANDY M.	§	BEFORE A SPECIAL EDUCATION
VS.	§	HEARING OFFICER
FORT BEND INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner Donnie M., by his next friend and mother Sandy M. (hereinafter "Petitioner" or "Donnie"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, et seq., alleging that Respondent Fort Bend Independent School District (hereinafter "Respondent" or "FBISD") failed to provide appropriate educational placements for the 1996-97 and 1997-98 school years. Petitioner sought relief including a finding of the inappropriateness of educational placements offered to Petitioner and reimbursement for unilateral placement and related costs.

Michael O'Dell, an attorney in Houston, represented Petitioner. Respondent was represented by Merri Schneider-Vogel, an attorney with the firm of Bracewell & Patterson in Houston.

Petitioner's request for hearing was filed on July 11, 1997, and the matter was set and reset for hearing on a number of occasions by agreement of the parties. The forty-five day rule was waived by the parties on August 25, 1997. The hearing on the merits was conducted in the offices of FBISD on December 17 and 18, 1997. Counsel for both parties filed post-hearing memoranda and the parties agreed that the decision in this matter was to be issued on or before January 16, 1998.

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. Donnie is a fourteen year old male currently in his eighth grade year in school. He resides with his parents within FBISD.

2. Donnie began demonstrating problems staying on task in school in kindergarten. He was first identified as a student eligible for special education and related services in his second grade year when he was identified as having a learning disability in written expression.

3. Donnie's parents placed Donnie in private school for his third grade year but he returned to the fourth grade in public school within the Respondent school district.

4. Because of his continued problems with attention difficulties and auditory processing, in the fourth grade Donnie was taken to a neurologist who diagnosed Tourette's syndrome. [Petitioner's Exhibit (hereinafter "P." 31]

5. In an evaluation by FBISD during the fourth grade, FBISD determined that Donnie did not meet eligibility criteria for speech impairment and performed an assistive technology assessment. [P. 40 and Respondent's Exhibit (hereinafter "R." 16]

6. Donnie began his sixth grade year at Sugarland Middle School within FBISD in a regular educational placement. He had problems staying on task and in completing assignments. Donnie's mother believes that he was depressed and that the depression was related to the inability to perform his school work. A psychiatrist prescribed an anti-depressant for Donnie but the medication did not preclude problems with his performance in school. Donnie was moved by his admission, review and

dismissal (hereinafter "ARD") committee into a self-contained placement.

7. Donnie and his parents began to see an educational consultant and counselor to work with issues in his schooling. The consultant is not licensed as a psychologist or counselor.

8. A neuropsychological evaluation of Donnie was completed in April, 1996, which concluded that Donnie has a central auditory processing disorder. The evaluator indicated that Donnie has an inability to process sounds in a meaningful way and cannot remember instructions he receives verbally if the instructions include more than one task. The evaluation established that Donnie has attention-deficit disorder and a learning disability in written expression. He has average abilities but needs an educational program which will be performed in a structured setting and which will let him be successful by giving him less work to do. The evaluation also demonstrated an eligibility for Donnie as speech impaired. [P. 2]

9. The evaluation of April 1996 showed Donnie's general reading abilities on about a sixth grade level and abilities in math above his grade level equivalency. [P. 2 and 31]

10. Donnie's mother was concerned during his sixth grade year, however, because of his refusal to do work in school (which she attributed to depression) and what she considered to be a discrepancy in his IQ scores. Donnie passed all of his courses in the sixth grade but had problems in completing his school work.

11. An ARD committee met in July 1996 to develop an individual education plan ("IEP") for Donnie's seventh grade year. The committee adopted the recommendations of the psychologist-audiologist who performed the evaluation of Donnie in April 1996. The committee noted that Donnie was eligible for special education

and related services as other health impaired due to his Tourette's syndrome and attention-deficit disorder and due to a speech impairment related to his auditory processing disorder. [R. 1 and P. 2 and 3]

12. At the July 1996 ARD meeting, Donnie's mother objected to the sixth grade reading level noted in the IEP and the committee changed the IEP to reflect a fifth grade reading level.

13. The IEP proposed for 1996-97 included two hours of speech therapy per week and modifications as suggested by the psychologist/audiologist. The ARD committee determined which courses in which Donnie could need extra support and provided the sources for them in a special education setting. Donnie's mother requested an occupational therapy evaluation because of his problems with dysgraphia. An evaluation performed in December 1996 indicated he did not meet eligibility criteria for occupational therapy services.

14. Donnie's mother did not assent to the IEP proposed on July 15, 1996. [R. 1]

15. Donnie's parents placed Donnie independently at a private school for his seventh grade year and he has continued in that placement through the date of the hearing in his eighth grade year. The school specializes in helping students with attention problems and learning disabilities.

16. Donnie has performed well at the private school and his grades and standardized test scores have improved. [P. 33]

17. Donnie's parents have paid for his tuition and other costs for placement at the private school. They have also paid for the services of the educational consultant who worked independently with Donnie and with them. [P. 37]

18. No discussion occurred in an ARD committee meeting about dual

enrollment at the private school and in FBISD so that Donnie might receive speech services provided by FBISD in his private placement. Donnie's mother told school officials she would require no additional services from the district after she decided to place Donnie privately. Donnie's mother had notice of her procedural rights and the services of an educational consultant who never contacted the district to pursue a dual enrollment. [R. 34]

Conclusions of Law

1. Donnie is eligible for special education and related services as a speech impaired and other health impaired student under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. Respondent Fort Bend Independent School District is a legally constituted independent school district within the State of Texas.

3. The proposed educational placement offered by Respondent in its ARD committee meeting in July 1996 was reasonably calculated to confer an educational benefit in the least restrictive environment under the standard of Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982).

4. Petitioner is not entitled to reimbursement for the costs of unilateral private placement for Donnie because Petitioner failed to prove that the placement offered for him by Respondent was inappropriate under the standard of School Committee of Burlington vs. Department of Education, 471 U.S. 359 (1985).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 16th day of January, 1998.

_____Lucius D. Bunton_____
Lucius D. Bunton
Special Education Hearing Officer

DOCKET NO. 421-SE-797

DONNIE M., B/N/F SANDY M.	§	BEFORE A SPECIAL EDUCATION
VS.	§	HEARING OFFICER
FORT BEND INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

Petitioner sought reimbursement for the cost of private placement alleging the placement offered by Respondent was inappropriate.

HELD: For Respondent. All relief for Petitioner denied.

Appendix C

Texas A&M University-Corpus Christi

College of Education

6300 Ocean Drive, Corpus Christi, Texas 78412

March 2, 2000

Dear Superintendent:

We, members of Cohort VIII of the Doctoral Program at Texas A&M Corpus Christi, are presently conducting research in Regions 1 and 2 to address concerns expressed by South Texas superintendents at a meeting in June 1999 at Texas A&M Corpus Christi. This study addresses special education litigation, reasons for special education litigation and the costs associated with special education litigation, and is conducted in cooperation with the South Texas Research and Development Center at Texas A&M Corpus Christi under the direction of Dr. Tom Linton.

While participation is voluntary, the quality of the study is dependent upon a high participation rate. Your assistance is vital to the success of this study as the information can only be obtained from professionals such as you.

Please take a few minutes to complete the enclosed survey and return it in the self-addressed envelope or by fax to David Yeager, Superintendent of Schools, at (361)786-2555. All data will be treated in a professional manner and all replies will be kept in strict confidence. All participants in the survey will receive a copy of the compiled data. In June 2000, all superintendents will be invited to Texas A&M Corpus Christi to participate in the presentation of our findings.

Thank you in advance for your participation and cooperation in this project.

Sincerely,

Thomas H Linton

Dr. Tom Linton

Researcher: L. Collavo, T.H. Giese, R. Vela, D. Yeager

Please return the enclosed survey in the self-addressed envelope or by fax to David Yeager, Superintendent of Schools, at (361)786-2555 no later than Friday, March 10, 2000.

Appendix D

DISTRICT COSTS OF SPECIAL EDUCATION LITIGATION

Strictly Confidential

As a practicing district superintendent, you have much to offer from which we can learn. Your participation in this study will enable us to gather information that will help institutions, practitioners, and researchers better understand the costs of special education litigation.

I. General Questions

Please answer each question by placing the answer in the space provided to the right of each question below.

1. How many regular students does your district serve? #_____
2. How many special education students does your district serve? #_____
3. What is your district's estimate budget for 1999 - 2000? $_____

II. Special Education Complaints and Hearings

1. Did your district have a special education hearing filed against the district during school year 1998 - 1999?
Yes_____ No_____ If **yes**, please answer each question by placing the answer in the space provided to the right of each question below.

*How many special education complaints went to hearing? #_____
*How many special education complaints were mediated? #_____
*How many special education complaints were resolved at the district? #_____

2. Did your district have a special education hearing filed against the district during school year 1999-2000?
Yes_____ No_____ If **yes**, please answer each question by placing the answer in the space provided to the right of each question below.

*How many special education complaints went to hearing? #_____
*How many special education complaints were mediated? #_____
*How many special education complaints were resolved at the district? #_____

III. Cost Estimates Related to Complaints

1. For the school year 1998-1999 please provide the approximate costs related to special education complaints (attorney fees, substitutes, witnesses, independent evaluations and TEA settlements). Check the applicable range of costs below.

***Hearings:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____

***Mediation:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____ **OVER:**

(III. Cost Estimates con't)

***Resolution at district:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____

2. For the school year 1999-2000 please provide the approximate costs related to special education complaints (attorney fees, substitutes, witnesses, independent evaluations and TEA settlements). Check the applicable range of costs below.

***Hearings:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____
***Mediation:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____
***Resolution at district:**	[ ] Below $1,000	[ ] $10,000 to $14,999	[ ] $25,000 to $$29,999
	[ ] $1,000 to $4,999	[ ] $15,000 to $19,999	
	[ ] $5,000 to $9,999	[ ] $20,000 to $24,999	[ ] Other $_____

VI. Probable Causes of Complaints

Please indicate your perception to the extent the following causes may have contributed to a special education complaint. Circle the number on the right of each item according to the scale below.

1-Never 2-Infrequently 3-Sometimes 4- Frequently 5- Always

* Parental Misunderstanding	1	2	3	4	5
* Parental lack of understanding of rights	1	2	3	4	5
* Parental lack of understanding of safe guards	1	2	3	4	5
* Inexperience of teacher	1	2	3	4	5
* Inexperience of administrator	1	2	3	4	5
* Inappropriate IEP	1	2	3	4	5
* None compliance with A.R.D. recommendations	1	2	3	4	5
* In appropriate least restrictive environment	1	2	3	4	5
* Failure to provide appropriate resources	1	2	3	4	5
* Related Services	1	2	3	4	5
* Inappropriate Assessment/Identification	1	2	3	4	5
* Lack of Extended Year Services	1	2	3	4	5
* Federal regulations	1	2	3	4	5
* State regulations	1	2	3	4	5

Thank you for your time and participation
END

Appendix E

FREQUENCY DISTRIBUTION OF SURVEY RESPONSES

DISTRICT COSTS OF SPECIAL EDUCATION LITIGATION

I. General Questions

Please answer each question by placing the answer in the space provided to the right of each question below.

1. How many regular students does your district serve? # 31--39,844
2. How many special education students does your district serve? # 1--6,199
3. What is your district's estimate budget for 1999 - 2000? $ $250k -289m

II. Special Education Complaints and Hearings

1. Did your district have a special education hearing filed against the district during school year 1998 - 1999?
Yes_____ No_____ If **yes**, please answer each question by placing the answer in the space provided to the right of each question below.

*How many special education complaints went to hearing? # 23 by 3 Districts
*How many special education complaints were mediated? # 2 by 2 Districts
*How many special education complaints were resolved at the district? # 36 by 14 Districts

2. Did your district have a special education hearing filed against the district during school year 1999-2000?
Yes_____ No_____ If **yes**, please answer each question by placing the answer in the space provided to the right of each question below.

*How many special education complaints went to hearing? # 6 by 4 Districts
*How many special education complaints were mediated? # 4 by 4 Districts
*How many special education complaints were resolved at the district? # 40 by 14 Districts

III. Cost Estimates Related to Complaints

1. For the school year 1998-1999 please provide the approximate costs related to special education complaints (attorney fees, substitutes, witnesses, independent evaluations and TEA settlements). Check the applicable range of costs below.

***Hearings:**
[0] Below $1,000
[0] $1,000 to $4,999
[1] $5,000 to $9,999
[0] $10,000 to $14,999
[1] $15,000 to $19,999
[0] $20,000 to $24,999
[0] $25,000 to $29,999
[x] Other: 1 at $50,000
8 at $111,901

***Mediation:**
[0] Below $1,000
[1] $1,000 to $4,999
[0] $5,000 to $9,999
[1] $10,000 to $14,999
[0] $15,000 to $19,999
[0] $20,000 to $24,999
[0] $25,000 to $$29,999
[0] Other $_____ **OVER:**

(III. Cost Estimates con't)

***Resolution at district:**	[0] Below $1,000	[3] $10,000 to $14,999	[0] $25,000 to $$29,999
	[3] $1,000 to $4,999	[0] $15,000 to $19,999	
	[8] $5,000 to $9,999	[2] $20,000 to $24,999	[0] Other$_____

2. For the school year 1999-2000 please provide the approximate costs related to special education complaints (attorney fees, substitutes, witnesses, independent evaluations and TEA settlements). Check the applicable range of costs below.

***Hearings:**	[0] Below $1,000	[0] $10,000 to $14,999	[0] $25,000 to $$29,999
	[0] $1,000 to $4,999	[0] $15,000 to $19,999	
	[1] $5,000 to $9,999	[1] $20,000 to $24,999	[0] Other $_____
***Mediation:**	[0] Below $1,000	[0] $10,000 to $14,999	[0] $25,000 to $$29,999
	[4] $1,000 to $4,999	[0] $15,000 to $19,999	
	[0] $5,000 to $9,999	[0] $20,000 to $24,999	[0] Other $_____
***Resolution at district:**	[2] Below $1,000	[1] $10,000 to $14,999	[0] $25,000 to $$29,999
	[6] $1,000 to $4,999	[0] $15,000 to $19,999	
	[4] $5,000 to $9,999	[2] $20,000 to $24,999	[x] Other: 1 at $30,000

IV. Probable Causes of Complaints

Please indicate your perception to the extent the following causes may have contributed to a special education complaint. Circle the number on the right of each item according to the scale below.

1-Never 2-Infrequently 3-Sometimes 4- Frequently 5- Always

	1	2	3	4	5
* Parental Misunderstanding	1	0	11	21	0
* Parental lack of understanding of rights	2	6	15	8	0
* Parental lack of understanding of safe guards	2	9	13	7	1
* Inexperience of teacher	4	11	9	6	0
* Inexperience of administrator	5	15	5	6	0
* Inappropriate IEP	4	9	13	4	1
* None compliance with A.R.D. recommendations	2	11	7	9	1
* In appropriate least restrictive environment	3	9	13	4	1
* Failure to provide appropriate resources	3	10	10	5	2
* Related Services	3	12	8	6	3
* Inappropriate Assessment/Identification	4	15	5	1	1
* Lack of Extended Year Services	6	17	5	1	1
* Federal regulations	5	13	5	7	1
* State regulations	5	13	6	6	1

Thank you for your time and participation

END

Appendix F

Texas Special Education Hearings Documentation Sheet

Docket#	Hearing Officer	Student	Gender	Age	Classification	Handicap	Region	Student lawyer	Reason(s)	Ruling

Explanations:

Gender M=Male, F=Female,

Classification E=Elementary (birth to grade 5), MS=Middle School (6th – 8th grade), HS=High School (9th grade to age 22),

Causes 1=innappropriate IEP, 2=not following ARD recommendations, 3=Inappropriate LRE, 4=failure to provide adequate resources, 5=related services, 6=inappropriate assessment/identification, 7 = Lack of EYS services, 8 = other

Handicap OI-orthopedic impairment, OHI-other health impaired, AI-auditory impairment, VI-visual impairment, DB-Deaf/blind, MR-mental retardation, ED-emotional disturbance, LD-learning disability, SI-speech impairment, A-autism, DD-developmental delay, TBI-traumatic brain injury, NEC-non-categorical early childhood

Ruling D = for the district, S = for the student